IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1052 OF 1987.

The State of Maharashtra. .... Appellant.

Versus.

1. Krishna Dattu Nulle,
   Age 56, Occ.:Agriculturist of
   Sonarmala, Hupri.

2. Appaso Krishna Nulle,
   Age 30, Agriculturist of
   Sonarmala, Hupri.

3. Balaso Krishna Nulle,
   Age 25, Occ.: Sonarkam of
   Sonarmala, Hupri.

4. Shrikant Krishna Nulle,
   Age 22, Occ.: Sonarkam,
   of Sonarmala, Hupri. .... Respondents.

Shri D.S.Mhaispurkar for the Appellant.

Shri Ganesh Gole for the Respondents.

CORAM ; SMT.RANJANA DESAI, &
ABHAY S. OKA, JJ.

DATED : 3rd November, 2004.

ORAL JUDGMENT (Per Smt.Ranjana Desai, J.).

1. The respondents (for convenience referred to as accused 1, 2, 3 ad 4 respectively) were tried in the Court of the Additional Sessions Judge, Kolhapur, in Sessions Case No.35 of 1986, for offence under section

302 read section 34 of the Indian Penal Code ("IPC" for short). They were also charged for offence under section 302 IPC simpliciter. By judgment and order dated 27 July 1987 the learned Sessions Judge acquitted the accused of all the offences. Being aggrieved by the said judgment and order, the State of Maharashtra has preferred this appeal.

2. At the trial the case of the prosecution was as follows:

3. The complainant Bhauso Atmaram Miraje resides at Randal village. He has three brothers and the deceased was his father. His father owned land at village Randal. He was cultivating it personally with the help of his sons. The complainant and his other brothers were looking after their powerloom business at Ichhalkaranji. According to the prosecution four years prior to the incident, the complainant’s father had handed over the said land to the accused for cultivation. However, the accused had not carried out agricultural operations properly. Hence the father of the complainant had taken back the said land from accused 1 and started cultivating it personally. Accused 2 to 4 are the sons of accused 1. All the

accused reside jointly.

4. After the land was taken back by the complainant's father from accused 1, it was lying fallow for one year. Thereafter in the next year the accused cultivated it behind the back of the complainant and his father and hence the complainant and his father removed the said crop from the said land. Then the accused started threatening his father saying that they will tie the complainant and his father to a cart and beat them. Since then their relationship with the accused was strained.

5. At the time of incident, the complainant and his father had sown ground nut, jawar and tur crops in the said land. On 13 December 1985, the complainant had been to the said land in order to stay with his father for protection of the crop at night. He went to the said land with his brother Shankar. They reached the land at about 10.30 p.m. They had taken with them tiffin for their father. At that time they noticed that their father was groaning and crying in loud tone. They asked their father as to what had happened. Thereupon their father told them that accused 1 and his sons had beaten him severely and that he should be taken to the

house.

6. As the complainant and his brother were talking with their father accused 1 to 4 came there. They started abusing the complainant's father. They were asking him as to why he is not allowing them to cultivate the said land. Thereafter all the accused again started beating the complainant's father. At that time accused 1 was having a sickle in his hand and with that sickle he gave blows on the complainant's father. Accused 2 was having hunter in his hand and with the hunter he beat the complainant's father. Accused 3 and 4 were carrying sticks and they also beat the complainant's father with the sticks. The complainant and his brother were requesting the accused not to beat their father. However, the accused did not listen to them. The Accused also beat the complainant and his brother. Thereafter they went away.

7. The complainant and his brother went to Ananda Patil, Nayaku Arage and to the vasti of Babu Arage and Devappa Lingade. They told them that accused 1 to 4 had beaten their father and the father was injured seriously. Then they returned along with the said persons. The complainant's father was in a position to

speak and he told them the entire incident. Then the complainant took his father in a bullock cart of Ananda Patil to the village and thereafter he took him to the dispensary. At that time Janardhan Miraje was with him. Prior to that the complainant went to Janardhan Miraje and told him about the incident. Janardhan Miraje also asked the complainant's father as to what had happened. The Complainant's father had narrated the incident to him.

8. At about 1.30 p.m. they came to Hupri Police Outpost and informed the police. Head Constable Desai directed the complainant to take his injured father to the dispensary. He gave a yadi for the same. The complainant took his father to the dispensary at Hupri. There the doctor treated his father.

9. Thereafter the complainant returned to his house. It appears that later on condition of the complainant's father became serious and hence the Medical Officer took the complainant's father to C.P.R.Hospital at Kolhapur along with the other brother of the complainant and admitted him in the said hospital. His father died in the C.P.R.Hospital, Kolhapur.

10. P.S.I. Kurade attached to Hatkanangale Police Station received information on 14 December 1986 in the morning about the incident. He came to Kolhapur and contacted the complainant. He took the complainant to Hupri Police outpost and recorded the vardi of the complainant and sent it for registration to Hatkanangale Police Station. Inquest panchanama was drawn at C.P.R.Hospital, Kolhapur by P.S.I. Kurade who was attached to Hatknangale Police Station. Postmortem was carried out on the corpse of the complainant's father by the Medical Officer attached to C.P.R.Hospital, Kolhapur. On the basis of the complaint investigation was started and accused 1 to 4 were arrested. After completion of the investigation the accused came to be charged as aforesaid.

11. In support of its case, the prosecution examined as many as 17 witnesses. The prosecution case basically rests on the evidence of the sons of the deceased i.e. P.W.5 Bhausaheb, and P.W.7 Shankar, who claim to be the eye witnesses. Medical evidence consists of evidence of P.W.6 Dr.Arvind Kamble who was working as Medical Officer at C.P.R.Hospital, Kolhapur, and who had done postmortem examination, and P.W.10 Dr.Patil who was working as Medical Officer at primary health centre at

Hupri. He had examined the deceased initially. The prosecution had also examined two more witnesses i.e. P.W.11 Ananda Patil and P.W.12 Janardhan Miraje in support of its case as regards oral dying declaration made by the deceased. The details of investigation have been given by P.W.17 PSI Vasant Kurade and P.W.14 PSI Madhukar Kulkarni. Defence of the accused was one of denial. They contended that they have been falsely implicated.

12. The evidence led by the prosecution did not find favour with the learned Sessions Judge and he acquitted the accused. The State of Maharashtra has challenged the said order of acquittal.

13. We have heard at considerable length the learned Counsel appearing for both sides, and have gone through the evidence and record of the case. Mr.Mhaispurkar, the learned A.P.P. appearing for the State contended that the trial Court erred in acquitting the accused in the face of the consistent and cogent evidence of the two eye wtinesses. He submitted that there was no reason for the eye witnesses to falsely implicate any one as assailant of their father. The learned A.P.P. further contended that there are minor discrepancies in

the evidence of the eye witnesses which do not discredit them at all. The learned A.P.P. further contended that the learned Judge erred in arriving at a conclusion that the prosecution has not proved the motive. He also submitted that the learned Judge lost sight of the fact that at the instance of the accused weapons of assault were discovered and on the hunter and stick blood stains were found. The learned A.P.P. pointed out that the sickle was also recovered and it had blood stains. The learned A.P.P. further contended that the trial Court lost sight of an important incriminating circumstance that blood stains were found on the clothes of the accused and the same were of the same blood group as that of the deceased. He therefore submitted that the judgment and order of acquittal be set aside and the accused be convicted in accordance with the law.

14. Mr.Gole, the learned Counsel appearing for the respondents on the other hand submitted that the view taken by the trial Court is the only possible view. He submitted that in any case even if some other view is possible on the basis of the evidence led before the trial Court, if the view taken by the trial Court is a reasonable and possible view this Court should not interfere with it in an appeal against the order of

acquittal. Mr.Gole submitted that the evidence of the eye witnesses does not inspire confidence. The prosecution case that the deceased made oral dying declaration has not been established. Mere finding of blood stains on the clothes of the accused would not lead to their involvement in the offence in question. He therefore submitted that this Court should confirm the order of acquittal passed by the trial Court.

15. We have given our anxious consideration to the submissions advanced by both the sides. We have carefully perused the evidence of the eye witnesses. P.W.5 Bhausaheb Miraji has stated that on the day of incident at about 6 p.m. he and his brother returned to the house from the field. They took meals. Sometime thereafter they started going to the field along with tiffin for their father. There was a lantern in the hand of Shankar. They went near the Khop in their field. They heard noise and weeping of their father from a distance of about 40 feet from the Khop. They went near their father. Their father was groaning and was holding his head in his hands. He asked him as to what had happened. His father told him that accused 1 and his sons had beaten him. According to this witness while he was making enquiry with his father, accused 1

to 4 came there. Accused 1 abused his father. Accused 1 gave two to three blows with a sickle near ear of his father. Accused 2 had black stick in his hand. Accused 3 had a hunter in his hand and accused 4 had a stick in his hand. Thereafter accused 2 to 4 started beating them and their father with the help of the said sticks and the hunter. The accused were beating them for five minutes. After that the accused fled from the scene of offence. Thereafter he and his brother went to the vasti of Nayaku Arage and woke him up. They told him about the incident. Nayaku woke up his brother Babu. The maternal uncle of Nayaku also accompanied them. This witness, his brother Shankar, Nayaku, his brother and Lingade returned to their land. Nayaku asked his father as to what had happened and his father told him that the accused 1 and his sons had beaten him. Then his father requested them to take him to the house. He and Nayaku then went to the vasti of Ananda. They told the incident to Ananda and requested for the bullock cart for help. Then all of them came with bullock cart to their land. Ananda also asked as to what had happened and his father told him that accused 1 and his three sons had beaten him. Then they shifted the deceased in the bullock cart and took him to their house. The deceased told the incident to his wife and

his other brothers who were in the house. Then they called Janardan Miraji in order to take the deceased to dispensary. They first went to Hupri Police Outpost and narrated the incident to the police constable who was present there. The police gave a yadi and asked them to take the deceased to the dispensary and accordingly they took the deceased to the dispensary where the doctor treated him. Then this witness and Janardan returned to the house and his brother and his mother stayed with the deceased in the dispensary. In the morning he came to know that his father was taken to the C.P.R. Hospital at Kolhapur and his condition was serious. Then he came to Kolhapur and there he came to know that his father had expired. The police came and made enquiries with him. PSI Kurade came from Hatkanangale Police Station and took him to Hupri where his F.I.R. was recorded. F.I.R.is at Exh.28.

16. We find that the criticism levelled against this witness is justified. Though this witness states that the accused had assaulted him and his brother for five minutes, this fact is conspicuously absent in the F.I.R. though the F.I.R. is lodged about 12 hours after the trial. The story that the accused who had severely assaulted the deceased came back again and assaulted the

deceased appears to us to be untrue and has been introduced only to make it appear that this witness and his brother had seen the incident. It is inconceivable that the accused would come back to assault the deceased again so that they would be seen by the sons of the deceased. In any case if this was true the complainant would not have failed to state in the F.I.R. that the accused assaulted him and his brother. Similar is the evidence given by P.W.7 Shankar. Shankar has also said that when they reached near their father the accused came back. Accused 1 gave sickle blow on the head of his father. Accused 2 gave stick blow on his father and accused 3 dealt a blow with hunter on his father and accused 4 also dealt stick blow on his father. He has also stated that the accused also gave them beating on account of which he sustained injuries on finger and on his leg. According to Shankar his father told the police about the incident. The complainant has also said so. However, no entry is made about it at the Hupri outpost. This casts a shadow of doubt on the prosecution story. We find it very risky to rely on such evidence because this evidence does not get sufficient corroboration from the other evidence on record.

17. P.W.10 Dr.Lalasaheb Patil who was attached to the Primary Health Centre Hupri had examined the deceased at 3.00 a.m. on 14 December 1985. He stated that the patient was conscious. According to him there were 15 injuries on the body of the deceased. He issued a certificate which is at Exh.40. According to Dr.Patil injuries 4 and 5 are possible because of blunt side of the sickle. He sutured these injuries. He has stated that all the injuries were caused by hard and blunt object.

18. P.W.6 Dr.Aravind Kambale performed postmortem examination on the corpse of the deceased. He noted 24 external injuries on the deceased. It is significant to note that there were two CLWs and two sutured wounds and the other injuries were abrasions and bruise marks. The following internal injuries were noted by Dr.Patil :

2. Haematoma under the scalp at right temporal region.

   Haematoma under scalp of frontal region on left side.

   Haematoma under parieto occipital region on both sides.

   Thorax-Haematoma onlateral sides of chest on

both sides, extending all over chest on lateral sides.

(a) Fracture of ribs on left side from 3rd to 8th rib.
Fracture site corrosponds to injury No.10 of column No.17.
Fracture ribs on right side from 3rd to 5th column No.17.

(b) Pluerae on both sides congested. About 500 C.C. lof fluid blood collected in left pleural cavity and about 100 cc of blood collected in right pleural cavity.
Right lung. Haematoma in middle lobe lateral aspect. About 5" x 4". Other lung tissue is pale. Weight 250 cavity.
Left lung - Haematoma in lower lobe lateral aspect 4" x 4". Other lung tissue is pale wieght 200 gms."

In the postmortem notes Exh.32 the cause of death is shown as Fracture Ribn C Haemothrax. According to Dr.Patil the injuries in column No.17 were possible with

hard and blund object like stick, bruises are possible by article 14 cable wire. Fracture of ribs was possible by Article 13 which is stick. What is significant is that in the opinion of Dr.Kamble the injuries were possible by hard and blund object. However, P.W.5 Bhausaheb Miraje has stated that accused 1 gave two to three blows with the sickle near the ear of his father. P.W.7 Shankar Miraje has stated that accused 1 gave sickle blows on the head of his father. None of the injuries found on the deceased could be said to have been caused by sharp edge of the sickle. None of the witnesses have said that the blows were given by the blunt side of the sickle. It is also significant to note that the sickle was not discovered at the instance of any of the accused. It was recovered by the police from a hut. Significantly panchanama shows that there were blood stains on the sharp edge of the sickle. Even if for a moment it is assumed that this was the very sickle which was used by the accused, finding of blood stains on the sharp edge of the sickle is totally inconsistent with the medical evidence. Use of sickle therefore becomes suspect. That makes us weary of accepting story of the prosecution witnesses that the deceased was given sickle blows by accused 1. It is true that if there is eye witness account, the medical

evidence recedes in the background. In this case we are not in a position to hold that the eye witnesses account is of a sterling quality and hence the medical evidence assumes importance.

19. Moreover from the scene of offence panchanama Exh.17 and from the evidence of panch witness Balu Kondiba it is clear that there are residential houses at a very short distance from the scene of offence. If the accused had assaulted the deceased and beaten his sons in the manner alleged by the prosecution and if the deceased and his sons were shouting and screaming, it is surprising how not a single person from the nearby vasti did not come to the scene of offence.

20. So far as the alleged dying declarations are concerned, they are also not proved. The prosecution has examined P.W.11 Ananda Patil. Ananda Patil has stated in his examination-in-chief that he asked the deceased as to what had happened and the deceased told him that Chikhale and his sons (the accused) had beaten him. However, in the cross-examination he has stated that his statement was recorded 8 to 10 days after the day of incident and that he had not said anything to anybody for 8 days after the incident. If this witness

was told by the deceased that the accused were his assailants, he ought to have told their names to the police. The fact that for a period of 8 to 10 days he kept quiet makes his evidence suspect. We are therefore, not impressed by his claim that he was told by the deceased that the accused were his assailants. The prosecution then examined P.W.12 Janardan Miraje. Janardan has stated that he asked the deceased as how he sustained injuries and the deceased told him that Chikhale and his sons beat him with stick and sickle. It is significant to note that in examination-in-chief he has also stated that the complainant told him that Chikhale and his sons had beaten his father. In his cross-examination he has clearly stated that he had not told the police at Hupri that the deceased had told him about the incident. Again in the same breath this witness says that he had told the police at Hupri that the accused had beaten the deceased and that he had also told about the said incident to the constable and the Head Constable Desai. He has made totally contradictory statements in his evidence. We find it risky to rely on the evidence of such witness. Besides P.W.13 Head Constable Desai does not say in his evidence that this witness told him that the deceased was assaulted by the accused. Complainant’s version does not get any

corroboration from Head Constable Desai. If really the deceased had told PHC Desai about the names of his assailants or if any of the witnesses had told PHC Desai about it, he would have made an entry at the police outpost at Hupri. PHC Desai had made no entry. Oral dying declarations, therefore, do not inspire confidence and will have, therefore, to be rejected.

21. It is true that there is discovery of hunter and sticks at the instance of the accused No.2. It is also true that on the hunter and stick blood stains were found but the blood group could not be identified.It is the case of the prosecution that sickle was found in another hut. But the prosecution has not established that the said hut belongs to the accused. We have also noted that on the clothes of the accused blood stains were found and the blood group of those blood stains matched with the blood group of the deceased. However, when the ocular evidence does not inspite confidence, and the medical evidence does not support it, we find it difficult to convict the accused only on the basis of the evidence of alleged discovery of weapon of assault and finding of blood stains, that too in an appeal against acquittal. In our opinion, the view taken by the learned trial Judge is reasonable possible view

which we are unable to disturb in an appeal against acquittal. We are unable to describe the impugned judgment as perverse. We, therefore, feel that no interference is called for with the impugned judgment and order. Hence the appeal is dismissed.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)